

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ALLEN R. CALDWELL,)	
)	
Plaintiff,)	Case No.:
)	
v.)	Circuit Court of the City of St. Louis
)	Cause No.: 1022-CC10505
SAINT LOUIS UNIVERSITY,)	
TENET HEALTHSYSTEM SL, INC.)	
d/b/a SAINT LOUIS UNIVERSITY)	
HOSPITAL, and)	
RICHARD BUCHOLZ, M.D.,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant Richard Bucholz, M.D. files this Notice of Removal of the above-captioned cause from the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. §§1331, 1441, 1442 and 1446. In support of this Notice of Removal, Defendant Richard Bucholz, M.D. respectfully states to the Court as follows:

1. Plaintiff in this cause, Allen R. Caldwell, filed this action, styled *Allen R. Caldwell v. Saint Louis University, Tenet HealthSystem SL, Inc. d/b/a Saint Louis University Hospital and Richard Bucholz, M.D.* in the Circuit Court for the City of St. Louis, State of Missouri. This cause is a civil action in which Plaintiff alleges medical negligence against the three Defendants. A copy of Plaintiff's Petition filed by Plaintiff Allen R. Caldwell in Cause No. 1022-CC10505 in the Circuit Court for the City of St. Louis, State of Missouri, is attached to this Notice and incorporated herein as Exhibit 1.

2. In the Petition filed by Plaintiff Allen R. Caldwell against Defendant Richard Bucholz, M.D. and others, it is alleged that Plaintiff suffered a stroke during a surgical procedure on August 25, 2008, which was proximally caused by the Defendants' negligence. [See, Exhibit 1, Plaintiff's Petition at p. 4, para. 14].

3. Of the eight specific allegations of negligence alleged against the Defendants in his Petition, Plaintiff states Defendants negligently and carelessly diagnosed Plaintiff having a brain tumor when, in fact, he did not have a brain tumor; negligently and carelessly recommended to Plaintiff he undergo a surgical procedure to remove a brain tumor when he did not have a brain tumor; and, in negligently and carelessly failing and omitting to conduct adequate and proper tests, evaluations and studies to confirm the existence of a brain tumor prior to performing a surgical procedure. [See, Exhibit 1, Plaintiff's Petition at p. 4, para. 14(a)-(c)].

4. The allegations of negligence identified above relate, at least in part, to pre-operative care and treatment provided to Plaintiff Allen R. Caldwell by Defendant Richard Bucholz, M.D. during his evaluation and pre-operative discussions with Plaintiff Allen R. Caldwell.

5. The pre-operative evaluations, diagnoses and discussions had with Plaintiff Allen R. Caldwell by Richard Bucholz, M.D. were conducted at the John Cochran St. Louis Veterans Administration Medical Center while Richard Bucholz, M.D. was acting on behalf of the Department of Veterans Affairs, an agency of the United States Government, eligible for coverage under the Federal Tort Claims Act.

6. Plaintiff Allen R. Caldwell at all times relevant to Plaintiff's cause of action, was receiving care as a patient of the Veteran's Administration.

7. Pursuant to 28 U.S.C. §1346(b)(1), the United District Courts have exclusive jurisdiction of civil matters on claims of personal injury caused by the alleged negligence of any employee of the United States Government acting within the scope of his office or employment. “Employee of the government” as used under U.S.C. §1346 includes “persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States.” See, 28 U.S.C. §2671. Actions against an employee, individually, of a federal agency or the United States government, are prohibited by 28 U.S.C. §2679(b). The exclusive remedy of a plaintiff against the United States for the conduct of a federal employee is provided by 28 U.S.C. §1346(b).

8. Plaintiff Allen R. Caldwell filed this action in the Circuit Court for the City of St. Louis, State of Missouri on August 11, 2010. This Defendant was served with Summons and Plaintiff’s Petition on August 20, 2010. [See, Exhibit 2, Return of Service concerning Defendant Richard Bucholz, M.D. from the court file of the Clerk of the St. Louis City Circuit Court].

9. This Notice of Removal is being filed in this Court on Monday, September 20, 2010; the 30th day following service of Plaintiff’s Petition on Defendant Richard Bucholz, M.D. having fallen on a Sunday. Pursuant to Federal Rule of Civil Procedure 44.01(a), the filing of this Notice of Removal is therefore timely.

10. Defendant Richard Bucholz, M.D. files with this Notice as Exhibit 3 copies of all State Court pleadings, including processes filed in the Circuit Court of the City of St. Louis.

WHEREFORE, Defendant Richard Bucholz, M.D. requests this Honorable Court accept jurisdiction over this action, and for such other and further relief, at law or in equity, to which this Defendant may show himself justly entitled.

Respectfully submitted,

/s/ Stephen G. Reuter

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**Attorneys for Defendants Saint Louis University
and Richard Bucholz, M.D.**

CERTIFICATE OF SERVICE

A true copy of the foregoing document was served via Electronic Mail and Regular U.S. Mail this 20th day of September, 2010, to:

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/s/ Stephen G. Reuter